

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Golden Entertainment, Inc.,

Case No. 2:21-cv-00969-CDS-EJY

Plaintiff

Order Granting Plaintiff's Motion to Continue the Stay

Factory Mutual Insurance Company

[ECF No. 74]

Defendant

This insurance dispute arising from the COVID-19 pandemic has been stayed since March 30, 2022, pursuant to an order from this court. ECF No. 66. The original impetus for the stay came from anticipation of a potentially authoritative opinion from the Ninth Circuit in *Circus Circus LV, LP v. AIG Spec. Ins. Co.*, 2022 WL 1125663 (9th Cir. Apr. 15, 2022). That case was resolved by way of an unpublished memorandum decision that declined to certify the questions of contractual interpretation relevant to the instant action. *Circus Circus*, 2022 WL 1125663, at *2 n.1. It instead presumed that Nevada would follow California authority. See *id.* at *1 (“As Nevada courts often rely on California law for guidance, there is no reason to believe the Nevada Supreme Court would rule differently [than the California Court of Appeal in a factually similar lawsuit].”). Because *Circus Circus* proved fruitless, plaintiff Golden Entertainment, Inc. now seeks to continue the stay imposed in this case until the Supreme Court of Nevada resolves a petition for writ of mandamus in another potentially authoritative case, *Starr Surplus Lines Ins. Co. v. JGB Vegas Retail Lessee, LLC* (“JGB”), Case No. 84986 (Nev. July 29, 2022)¹. See generally ECF No. 74.

²⁵ I take judicial notice of the JGB proceedings. Federal courts “may take notice of proceedings in other courts, within and **without the federal judicial system**, if those proceedings have a direct relation to matters at issue.” U.S. ex. rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992) (internal quotation marks and citation omitted) (emphasis added).

1 Defendant Factory Mutual Insurance Company opposes the motion and seeks to lift the stay on
 2 December 30, 2022. ECF No. 75 at 5. Continuing the stay will serve to protect principles of
 3 comity and federalism as the parties await the Supreme Court of Nevada's pronouncement on
 4 issues of Nevada law that will likely pertain to this action. I thus grant plaintiff's motion.

5 **I. Legal Standard**

6 "A district court has inherent power to control the disposition of the causes on its docket
 7 in a manner which will promote economy of time and effort for itself, for counsel, and for
 8 litigants." *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962). When considering entering such a
 9 stay, a court should consider three factors:

10 [(1)] [T]he possible damage which may result from the granting of a stay, [(2)]
 11 the hardship or inequity which a party may suffer in being required to go
 12 forward, and [(3)] the orderly course of justice measured in terms of the
 13 simplifying or complicating of issues, proof, and questions of law which could be
 expected to result from a stay.

14 *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005) (internal quotation omitted).²

15 **II. Discussion**

16 Applying the three *Lockyer* factors, I exercise my discretion to continue the stay:

17 A. *The Possible Damage Which May Result from the Granting of a Stay*

18 Factory Mutual contends that a stay will deny it justice because the requested stay is
 19 indefinite and lengthy. While I agree that an indefinite stay could potentially pose some harm to

20 ² Factory Mutual contends that the appropriate legal standard for a stay in this matter comes from
 Colorado River Water Conservation Dist. v. U.S., 424 U.S. 800 (1976), then argues that the *Colorado River* factors
 21 do not support a stay. See generally ECF No. 75. While I agree that a *Colorado River* stay is unwarranted, it is
 22 because *Colorado River* is not the appropriate standard to guide the instant motions. The Ninth Circuit
 23 has "repeatedly emphasized that a *Colorado River* stay is inappropriate when the state court proceedings
 24 will not resolve the entire case before the federal court." *United States v. State Water Res. Control Bd.*, 988 F.3d
 25 1194, 1204 (9th Cir. 2021). *Colorado River* stays may be considered "in situations involving the
 26 contemporaneous exercise of concurrent jurisdictions[.]" *Colo. River*, 424 U.S. at 817 (emphasis added). There is no risk of the Supreme Court of Nevada exercising concurrent jurisdiction over the issues presented in the instant matter. Its decision in *JGB* may serve as precedential authority, but it will not suffice to "resolve the entire case before the federal court." *State Water Res. Control Bd.*, 988 F.3d at 1204. The *Colorado River* doctrine fundamentally serves to protect parties from parallel state and federal court (or duplicative federal court) proceedings. The *JGB* case is not parallel to this one. Consequently, *Colorado River* does not pertain to this case.

1 a defendant, briefing has been completed; thus, the duration of the proposed stay portends to be
 2 minimal. Factory Mutual's concern regarding an indefinite stay is ameliorated by my restriction
 3 that the stay last either until a JGB decision is rendered or just over a year after briefing in JGB
 4 was completed (on August 18, 2022), whichever occurs first.

5 Furthermore, the instant litigation poses the question of whether Factory Mutual owes
 6 Golden Entertainment millions of dollars in insurance coverage. While the stay continues,
 7 Factory Mutual's position vis-à-vis the status quo remains unchanged: Factory Mutual retains
 8 the money that it argues Golden Entertainment has no legal right to claim. In sum, Factory
 9 Mutual is unlikely to be harmed from my granting of a continued stay. This factor weighs
 10 toward continuing the stay.

11 B. *The Hardship or Inequity Which a Party May Suffer in Being Required to Go Forward*

12 Golden Entertainment asserts that both parties will bear great hardship if this case
 13 proceeds before the Supreme Court of Nevada issues a ruling in JGB. The attorneys could engage
 14 in costly discovery and motions practice to the potential detriment of their clients, all while the
 15 specter of a decision capable of changing the relevant issues to the litigation hangs overhead.
 16 However, being required to litigate a suit, without more, does not constitute a "clear case of
 17 hardship or inequity[.]" See *Deutsche Bank Nat'l Trust Co. v. Chi. Title Ins. Co.*, 2022 WL 3647889, at *2
 18 (D. Nev. Aug. 24, 2022) (stating that incurring fees and costs from litigating a case is insufficient
 19 for this factor to weigh in favor of a stay (citing *Lockyer*, 398 F.3d at 1112)). Consequently, this
 20 factor weighs against continuing the stay.

21 C. *The Orderly Course of Justice*

22 The orderly course of justice is promoted by simplifying issues of fact and questions of
 23 law. The Supreme Court of Nevada's decision in JGB—regardless of which way the Court
 24 rules—will likely have the effect of precluding certain arguments as a matter of law or clarifying
 25 the insurance policy language such that adjudication of the issues relevant to the present case is
 26 easier. Golden Entertainment points to conflicting judgments already rendered on insurance

1 policy language like the language at issue in the present case. See ECF No. 74 at 11–12 (collecting
2 cases). Rather than having the parties brief how I think the Supreme Court of Nevada would
3 rule on whether COVID-19-related harms constitute “physical loss or damage” to property, the
4 orderly course of justice suggests that I wait and see how the Court actually rules on the topic.
5 This factor weighs in favor of continuing the stay.

6 D. Conclusion

7 Because the proceedings in the Supreme Court of Nevada are likely to conclude within a
8 reasonable time in relation to the urgency of the claims in the instant suit, and because the
9 *Lockyer* factors lean two-to-one in favor of continuing the stay, I find that the fairest course of
10 action is for this case to remain stayed pending resolution of the *JGB* appeal.

11 III. Conclusion

12 IT IS THEREFORE ORDERED that plaintiff’s motion to continue the stay [ECF No. 74]
13 is GRANTED. This case is to remain stayed until the Supreme Court of Nevada reaches a
14 decision in *JGB* or August 21, 2023, whichever date comes first.

15 IT IS FURTHER ORDERED that the parties are to file a joint status report on or before
16 August 21, 2023, describing whether *JGB* resulted in relevant authority, or—if no decision has
17 been issued—the status of the litigation.

18 IT IS SO ORDERED.

19 DATED: November 30, 2022

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Cristina D. Silva
United States District Judge